

REMARKS/ARGUMENTS

Claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57 are pending in this application. For at least the reasons set forth below, Applicants respectfully submit that the present claims are patentably distinguishable over the cited art.

Claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57 stand rejected under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for an adhesive backed label being detachably connected to a release liner, does not reasonably provide enablement for a second surface of the three-dimensional tape being connected to an adhesive backed label which is in turn detachably connected to a release liner.

Applicants respectfully submit that claim 1 now recites that the adhesive backed label is detachably connected to a release liner, which is fully enabled by the present specification, as noted by the Action.

Claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. Particularly, with respect to claim 1, the Action queries whether the adhesive-backed label is considered the pre-applied adhesive or is there a pre-applied adhesive and a separate adhesive backed layer?

As noted above, claim 1 now recites that the adhesive backed label is detachably connected to a release liner. Therefore, claim 1 is definite.

In lieu of the above, Applicants respectfully request reconsideration and withdrawal of the §112 rejections of claims 1, 3, 4, 6, 7, 13, 16 through 18, 23 and 48 through 57.

Claims 1, 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 3,575,169 to Voss ("Voss '169") in further view of U.S. Patent No. 5,491,015 to Reeves et al. (Reeves).

Claim 1 recites a tampon applicator barrel with a finger grip including an applicator barrel body having an outer surface. A three-dimensional tape is connectable to a portion of the outer surface. The tape includes a first surface and a second surface opposite the first surface. The first surface has formed thereon at least one integrally formed gripping structure. The second surface is detachably connected to a release liner.

Voss '169 discloses a tampon applicator with an outer tube that has an arrangement of one or more elements secured to the surface of the outer tube. The one or more elements enhance gripping and referencing of the applicator during use. Each of the one or more elements are separately formed from the barrel and are subsequently connected to the barrel via adhesive, radio frequency melting or interference fit.

Reeves is directed to slip control sheeting with a backing having a first and a second major surface and an array of protrusions on the first major surface. The sheeting can further comprise at least one of a layer of adhesive on the second major surface, a reinforcing web, or a mechanical fastening component for fastening to backing to a substrate (see Abstract). The slip control sheeting is used on gymnastic apparatuses, tool handles, mallets, racquets, baseball bats, golf clubs and sports sticks (col. 1, lines 14-17).

Applicants respectfully submit that Voss '169 fails to disclose or suggest a tampon applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface detachably connected to a release liner, as recited in claim 1.

Applicants disagree with the Action's characterization of the elements of Voss (see Figures 2-7) as three-dimensional tape. Voss provides plastic elements formed by an extrusion process to make fluted pipe, which can then be cut and glued separately to the applicator barrel. Clearly, fluted pipe is not tape.

In contrast, Voss '169 discloses elements that are fabricated from paper, cardboard or plastic and are subsequently applied to a tampon applicator barrel by adhesive, interference fit or melt bonding. In the only instance where Voss '169 discloses the use of adhesive backing, it is exclusive to the use of sandpaper having an adhesive backing for affixing the sandpaper to the elements. However, not only is sandpaper not tape, sandpaper is not three-dimensional tape with at least one integrally formed gripping structure, as claimed. To the contrary, the application of sand to paper to form sandpaper is anything but integral formation, but is the combination of two separate components, unlike the present invention. The gripping structure of the claimed invention is formed in the tape itself, and is not a separate component separately formed and subsequently adhered to the tape.

Furthermore, Voss' failure to disclose or suggest a finger grip formed from tape, such as that of the present invention, is further demonstrated in the one instance that Voss does disclose the use of tape in their invention. Tape is used merely in the manufacturing process to hold the elements in place prior to being individually adhered to the tubular member by separate means. The tape itself is not an integral part of the end-product. Clearly, Voss '169 never contemplated the use of the tape as part of the finger grip itself, as recited in claim 1 of Applicants' invention.

Therefore, contrary to the Action's contention, Applicants respectfully reassert that Voss '169 fails to disclose or suggest any three-dimensional tape, let alone a three-dimensional tape with at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as in the claimed invention. As such, Voss '169 fails to anticipate or render obvious the claimed invention.

Although incorrectly contending that Voss '169 does disclose a three-dimensional tape, the Action correctly notes on page 4 that Voss '169 differs from claim 1 in that the three dimensional tape is connected to an adhesive backed label detachably connected to a release liner. To cure this deficiency in Voss '169, the Action relies on Reeves stating

that it would have been obvious to one skilled in the art to provide the three-dimensional tape of Reeves in combination with the applicator barrel of Voss because Voss teaches the use of a three-dimensional tape in use with an applicator barrel and the substitution of one three-dimensional tape for another includes only a level of ordinary skill in the art.

As noted above, Voss '169 fails to disclose or suggest the use of three-dimensional tape on a tampon applicator. Therefore, due to this lack of disclosure or suggestion in Voss, there can be no motivation to look to any other reference, let alone Reeves, for a teaching of the use of three-dimensional tape on a tampon applicator barrel, as in the present invention. As such, the Action fails to make a *prima facie* case of obviousness.

It is only through the incorrect characterization of the finger grip elements in Voss '169 and the erroneous hindsight reconstruction based on Applicants' specification that the Action arrives at the claimed invention. The only disclosure of an applicator barrel with a three-dimensional tape with one or more integrally formed gripping structures on a first surface and a second surface detachably connected to a release liner is in the present specification and claimed invention. "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonic, Inc. v. Aerosonic Corp., 38 USPQ 2d 1551, 1554 (Fed. Cir. 1996), citing Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

Moreover, even if one were to incorrectly assume that there is motivation in Voss '169 to look to other references for three-dimensional tape as recited in claim 1, Applicants respectfully submit that one skilled in the art of making tampon applicators would not look to Reeves. Reeves is directed to the use of slip control sheeting on gymnastic stations, athletic equipment, tools and mallets. Notably absent from Reeves is any disclosure or suggestion of using their slip control sheeting on a tampon applicator barrel, as in the presently claimed invention. Moreover, the only disclosure of "tape" in Reeves is in the Background section where Reeves distinguishes its invention over prior art use of tape on grips of game and sports appliances, e.g., rackets (col. 2, lines 13-26). Therefore, it would

not have been obvious to one skilled in the art to combine the teachings of Reeves with the Voss '169 applicator in view of the deficiencies in each reference, as noted above.

Furthermore, Reeves is nonanalogous art. "In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). As noted above, Reeves is directed to the use of slip control sheeting on gymnastic stations, athletic equipment, tools and mallets. Notably absent from Reeves is any disclosure or suggestion of using their slip control sheeting on a tampon applicator barrel, as in the presently claimed invention. Thus, Reeves is clearly outside of the field of tampon applicators with a finger grip. Moreover, a person of ordinary skill, seeking to solve the problem of improving grip on a tampon applicator would not be reasonably expected or motivated to look to slip control sheeting used on gymnastic apparatuses, tool handles, mallets, racquets, baseball bats, golf clubs and sports sticks. Thus, Reeves is not reasonably pertinent to the particular problem of improving grip on a tampon applicator, and outside of the analogous art.

Therefore, Applicants respectfully submit that claim 1 defines an invention that is neither disclosed nor suggested by Voss '169 or Reeves, taken alone or in combination.

Dependent claim 3 is also patentable for at least the reasons discussed above for independent claim 1. Dependent claim 3 recites the applicator barrel of claim 1 and further recites that the at least one gripping structure extends inwardly from the first surface.

Voss provides for a gripping and indexing arrangement having a continuous element of a wavy configuration as shown in Figure 5. Applicants disagree with the Action's characterization of the wavy configuration as extending inwardly from the first surface. Voss has an outer surface (46), shown in Figure 5 as the positions spaced apart from the outer surface of the tubular member, and edge (48) providing the user with a gripping arrangement (col. 4, lines 53-55). Thus, unlike claim 3, the wavy configuration

provides a gripping structure that extends outwardly from the first surface. Therefore, claim 3 is patentable over the cited art.

Dependent claim 6 is also patentable for at least the reasons discussed above for independent claim 1. Dependent claim 6 recites the applicator barrel of claim 4 and further recites that the plurality of gripping structures form a diamond pattern.

Dependent claim 7 is also patentable for at least the reasons discussed above for independent claim 1. Dependent claim 7 recites the applicator barrel of claim 4 and further recites that the plurality of gripping structures form a box-diamond combination pattern.

The Action considers that the protrusions (22) alone of Reeves to form the diamond pattern (claim 6) and the protrusions along with the underlying portion of the layer (12) to form the box-diamond combination pattern (claim 7), as claimed. Applicants respectfully disagree with the Action's contention. The diamond pattern and the box pattern are clearly depicted in Figures 6 and 7 of the present specification. Looking at Reeves, protrusions (22) are shown as pyramids or pyramid frustums (col. 2, lines 37-40 and Figure 1). Moreover, layer (12) is merely a backing layer. Nowhere in Reeves is a diamond pattern, a box pattern or a box-diamond combination pattern disclosed or suggested. Therefore, claims 6 and 7 are patentable over the cited art.

Applicants respectfully submit that claim 1, as well as each claim depending directly or indirectly from claim 1, defines an invention that is neither disclosed or suggested by Voss '169 or Reeves, taken alone or in combination. As such, reconsideration and withdrawal of the §103(a) rejection of claims 1, 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 is respectfully requested.

Claims 1, 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 3,575,169 to Voss ("Voss '169").

As stated above, claim 1 recites a tampon applicator barrel with a finger grip including an applicator barrel body having an outer surface. A three-dimensional tape is connectable to a portion of the outer surface. The tape includes a first surface and a second surface opposite the first surface. The first surface has formed thereon at least one integrally formed gripping structure. The second surface is detachably connected to a release liner.

As stated above, Voss '169 discloses a tampon applicator with an outer tube that has an arrangement of one or more elements secured to the surface of the outer tube. The one or more elements enhance gripping and referencing of the applicator during use. The one or more elements are separately formed from the barrel and are subsequently connected to the barrel via adhesive, radio frequency melting or interference fit.

Applicants respectfully submit that Voss '169 fails to disclose or suggest a tampon applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface. Furthermore, as the Action concedes, Voss fails to disclose or suggest a second surface detachably connected to a release liner, as recited in claim 1.

As stated above, Applicants disagree with the Action's characterization of the elements of Voss (see Figures 2-7) as three-dimensional tape. Where plastic elements are formed by an extrusion process to make fluted pipe, which can then be cut and glued separately to the applicator barrel. Clearly, fluted pipe is not tape.

In contrast, Voss '169 discloses elements that are fabricated from paper, cardboard or plastic and are subsequently applied to a tampon applicator barrel by adhesive, interference fit or melt bonding. In the only instance where Voss '169 discloses the use of adhesive backing, it is exclusive to the use of sandpaper having an adhesive backing for affixing the sandpaper to the elements. However, not only is sandpaper not tape, sandpaper is not three-dimensional tape with at least one integrally formed gripping structure, as claimed. To the contrary, the application of sand to paper to form sandpaper

is anything but integral formation, but is the combination of two separate components, unlike the present invention. The gripping structure of the claimed invention is formed in the tape itself, and is not a separate component separately formed and subsequently adhered to the tape.

Furthermore, Voss' failure to disclose or suggest a finger grip formed from tape, such as that of the present invention, is further demonstrated in the one instance that Voss does disclose the use of tape in their invention. Tape is used merely in the manufacturing process to hold the elements in place prior to being individually adhered to the tubular member by separate means. The tape itself is not an integral part of the end-product. Clearly, Voss '169 never contemplated the use of the tape as part of the finger grip itself, as recited in claim 1 of Applicants' invention.

Therefore, contrary to the Action's contention, Applicants respectfully reassert that Voss '169 fails to disclose or suggest any three-dimensional tape, let alone a three-dimensional tape with at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as in the claimed invention. As such, Voss '169 fails to anticipate or render obvious the claimed invention.

It is only through the incorrect characterization of the finger grip elements in Voss '169 and the erroneous hindsight reconstruction based on Applicant's specification that the Action arrives at the claimed invention. The only disclosure of an applicator barrel with a three-dimensional tape with one or more integrally formed gripping structures on a first surface and a second surface detachably connected to a release liner is in the present specification and claimed invention. "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonics, Inc. v. Aerosonic Corp., 38 USPQ 2d 1551, 1554 (Fed. Cir. 1996), citing Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1138, 227 USPQ 543, 547 (Fed. Cir. 1985).

Therefore, Applicants respectfully submit that claim 1 defines an invention that is neither disclosed or suggested by Voss '169 or Reeves, taken alone or in combination.

Dependent claims 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 are also patentable for at least the reasons discussed above for independent claim 1.

Claims 1, 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 3,347,234 to Voss ("Voss '234").

As stated above, claim 1 recites a tampon applicator barrel with a finger grip including an applicator barrel body having an outer surface. A three-dimensional tape is connectable to a portion of the outer surface. The tape includes a first surface and a second surface opposite the first surface. The first surface has formed thereon at least one integrally formed gripping structure. The second surface is detachably connected to a release liner.

Voss '234 discloses a tampon applicator having a ring secured to the outer surface of the barrel. The ring acts as a tactile indexing and improved gripping means and inhibits inward deformation of the barrel under finger gripping pressure. The ring can be connected to the barrel with adhesive, and may be formed from paper, plastic, metal, emeryboard, ceramic, rubber or the like.

Applicants respectfully submit that Voss '234 fails to disclose or suggest a tampon applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface. Furthermore, as the Action concedes, Voss fails to disclose or suggest a second surface detachably connected to a release liner, as recited in claim 1.

Applicants respectfully disagree with the Action's characterization of the strengthening ring in Voss as three dimensional tape. Voss provides for a strengthening ring formed as a continuous smooth ring, which is clearly not tape. Voss also provides a

strengthening ring formed of a flat strip, which is not three dimensional. Thus, in addition to Voss failing to disclose or suggest the use of tape, Voss also fails to disclose or suggest use of a release liner in combination with tape as provided by the Action.

Furthermore, Voss '234 fails to disclose or suggest a first surface having formed thereon at least one integrally formed gripping structure. Voss '234 provides a strengthening ring fabricated of paperboard, rubber, emeryboard, paper, plastic, metal, or ceramic, none of which have a first surface having formed thereon at least one integrally formed gripping structure. Moreover, Voss teaches away from a first surface having formed thereon at least one integrally formed gripping structure by providing for a strengthening ring having a smooth outer surface, as clearly shown in Figures 1, 3, 4 and 6. In fact, other than a ring, Voss '234 fails to disclose or suggest any other type of finger grip structure, let alone one that remotely resembles the claimed three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner.

Therefore, contrary to the Action's contention, Applicants respectfully reassert that Voss '234 fails to disclose or suggest any three-dimensional tape, let alone a three-dimensional tape with at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as in the claimed invention. As such, Voss '234 fails to anticipate or render obvious the claimed invention.

Dependent claims 3, 4, 6, 7, 13, 23, 48 through 54, 56 and 57 are also patentable for at least the reasons discussed above for independent claim 1.

Claims 16 through 18 stand rejected under 35 USC §103(a) as being unpatentable over Voss '169 in view of Reeves and further in view of U.S. Patent No. 3,347,234 to Voss (Voss '234).

Claims 16 through 18 each depend directly or indirectly from claim 1. As stated above, Voss '234 discloses a tampon applicator having a ring secured to the outer surface of the barrel. The ring acts as a tactile indexing and improved gripping means and inhibits inward deformation of the barrel under finger gripping pressure. The ring can be connected to the barrel with adhesive, and may be formed from paper, plastic, metal, emeryboard, ceramic, rubber or the like.

Also noted above, Voss '169 fails to disclose or suggest an applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as recited in claim 1. Moreover, Reeves fails to cure the deficiencies of Voss '169.

It is respectfully submitted that Voss '234 also fails to cure the deficiencies of Voss '169, in that it also fails to disclose or suggest the applicator barrel recited in claim 1. As stated above, other than a ring, Voss '234 fails to disclose or suggest any other type of finger grip structure, let alone one that remotely resembles the claimed three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner. Therefore, it follows that since none of the cited references, taken alone or in combination, disclose or suggest the applicator barrel recited in claim 1, none of the cited references can render obvious the applicator barrel recited in claims 16 through 18, since these claims depend either directly or indirectly from claim 1.

Therefore, claims 16 through 18 are patentably distinguishable over the cited references. As such, reconsideration and withdrawal of the §103(a) rejections of these claims is respectfully requested.

Claims 16 through 18 stand rejected under 35 USC §103(a) as being unpatentable over Voss '169 in view of U.S. Patent No. 3,347,234 to Voss (Voss '234).

Claims 16 through 18 each depend directly or indirectly from claim 1. As stated above, Voss '234 discloses a tampon applicator having a ring secured to the outer surface of the barrel. The ring acts as a tactile indexing and improved gripping means and inhibits inward deformation of the barrel under finger gripping pressure. The ring can be connected to the barrel with adhesive, and may be formed from paper, plastic, metal, emeryboard, ceramic, rubber or the like.

As noted above, Voss '169 fails to disclose or suggest an applicator barrel with a three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner, as recited in claim 1.

As stated above, it is respectfully submitted that Voss '234 fails to cure the deficiencies of Voss '169, in that it also fails to disclose or suggest the applicator barrel recited in claim 1. As stated above, other than a ring, Voss '234 fails to disclose or suggest any other type of fingergrip structure, let alone one that remotely resembles the claimed three-dimensional tape having at least one integrally formed gripping structure on a first surface and a second surface connected to an adhesive backed label detachably connected to a release liner. Therefore, it follows that since none of the cited references, taken alone or in combination, disclose or suggest the applicator barrel recited in claim 1, none of the cited references can render obvious the applicator barrel recited in claims 16 through 18, since these claims depend either directly or indirectly from claim 1.

Therefore, claims 16 through 18 are patentably distinguishable over the cited references. As such, reconsideration and withdrawal of the §103(a) rejections of these claims is respectfully requested.

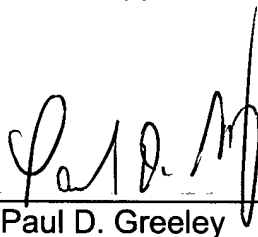
Claims 16 through 18 stand rejected under 35 USC §103(a) as being unpatentable over Patent No. 3,347,234 to Voss (Voss '234).

Dependent claims 16 through 18 are patentable for at least the reasons discussed above for independent claim 1. Therefore, claims 16 through 18 are patentably distinguishable over the cited references. As such, reconsideration and withdrawal of the §103(a) rejections of these claims is respectfully requested.

The Action recites on page 10 that Applicants admit the "Voss reference discloses an adhesive applied to each separate gripping element and that each separate gripping element is then affixed to the outer surface of the tampon," which provides for a tape with integrally formed element connected to an adhesive. Applicants' respectfully disagree. Page 3, paragraph 2 of Applicant's specification recites "an adhesive is applied to either each separate gripping element or the outer surface of the tampon applicator" and "[e]ach separate gripping element is then affixed to the outer surface of the tampon at the finger grip area." However, as discussed above, Applicants disagree the elements of Voss are three-dimensional tape, as characterized by the Action, because Voss provides plastic elements formed by an extrusion process to make fluted pipe, which can then be cut and glued separately to the applicator barrel. Applicant maintains that fluted pipe is not tape.

Applicants respectfully submit that the pending claims define an invention that is neither disclosed nor suggested by the cited references. As such, reconsideration and withdrawal of the rejections and passage of this application to allowance is respectfully requested.

December 14, 2004



Paul D. Greeley
Registration No. 31,019
Attorney for Applicants
Ohlandt, Greeley, Ruggiero & Perle, LLP
One Landmark Square, 10th Floor
Stamford, CT 06901-2682
Tel: (203) 327-4500
Fax: (203) 327-6401